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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,073	10/11/2000	David Traynor	2043.165US1	5507
49845	7590	08/12/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.			COLBERT, ELLA	
EBAY			ART UNIT	
P.O. BOX 2938			PAPER NUMBER	
MINNEAPOLIS, MN 55402-0938			3624	

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/686,073

**Applicant(s)**

DAVID TRAYNOR

**Examiner**

Ella Colbert

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,8-15 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,8-15 and 32-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/28/05</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-4, 8-15, and 32-34 are pending. Claims 1, 9-11, and 15 have been amended in this communication filed 05/06/05 entered as Amendment with RCE and Request for Extension of Time. The IDS files 03/28/05 has been reviewed and entered.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/06/05 has been entered.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-4, 8-15, and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,890,138) Godin et al, hereafter Godin in view of US 6,405,175) Ng.

Claim 1. Godin teaches, A networked sales method, including: presenting via a first network a sales screen to a user showing a plurality of price choices for an item (col. 3, lines 15-48 and fig. 1 (6 & 16). Godin failed to teach, generating a feedback indication for the item, at each of the plurality of price choices, using available supply and sales level information generated from actions of other users and conveying the feedback indication to the user on the sales screen. Ng teaches, generating a feedback indication for the item, at each of the plurality of price choices, using available supply and sales level information generated from actions of other users and conveying the feedback indication to the user on the sales screen (col. 8, lines 38-67 and col. 9, lines 19-29 and lines 40-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made

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to generate a feedback indication for the item, at each of the plurality of price choices, using available supply and sales level information generated from actions of other users and conveying the feedback indication to the user on the sales screen and to modify in Godin in view of Godin's sales screen showing price choices for an item and because such a modification would allow Godin to give either positive or negative feedback about the price of an item.

Claim 2. Godin failed to teach, The method of claim 1 wherein the conveying includes displaying the feedback indication in the sales screen. Ng. Teaches, wherein the conveying includes displaying the feedback indication in the sales screen (col. 8, lines 38-55 and lines 56-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the conveying to include displaying the feedback indication in the sales screen and to modify in Godin because such a modification would allow Godin to give either positive or negative feedback about the price of an item.

Claim 3. Godin teaches, The method of claim 2 wherein the conveying includes displaying the feedback indication in the form of one of a series of different pictorial icons (col. 5, lines 41-51).

Claim 4. Godin teaches, The method of claim 1 wherein the feedback indication is associated with one or more factors selected from a group including quantities of the item sold, quantities of the item reserved at future price points, quantities of the item for which a reminder request has been entered, and the time duration incurred to sell the item (col. 3, lines 44-53).

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Claim 8. Godin teaches, The method of claim 1 wherein the converting is performed continuously in near real time (col. 3, lines 65-66).

Claim 9. Godin teaches, The method of claim 1 wherein the presenting includes presenting time-separated price choices from a falling-price schedule (col. 6, lines 50-56).

Claim 10. Godin teaches, The method of claim 1 wherein the presenting a plurality of price choices includes displaying a present price and at least one future price, and further includes displaying a present purchase control button next to the present price and a future purchase control button next to the at least one future price (col. 3, lines 48-53).

Claim 11. Godin teaches, A network sales terminal for use in communicating with a sales server via a network, including: an item identification area responsive to the sales server via the network, a plurality of price choice selection controls for the item identified in the item identification area and having outputs provided to the sales server via the network (col. 2, lines 1-14 and lines 22-60). Godin failed to teach, a feedback indication area responsive to the sales server via the network and operative to display a feedback indication, derived from a quantity of the item available and sales of the item through other sales terminals in association with the plurality of price choices. Ng teaches, a feedback indication area responsive to the sales server via the network and operative to display a feedback indication, derived from a quantity of the item available and sales of the item through other sales terminals in association with the plurality of price choices (col. 8, lines 42-52). Ng did not expressly teach a server. Godin teaches

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a server (col. 1, 59-col. 2, line 14 and lines 39-63) that can be used for a sales server. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a feedback indication area responsive to the sales server via the network and operative to display a feedback indication, derived from a quantity of the item available and sales of the item through other sales terminals in association with the plurality of price choices and to modify in Godin because such a modification would allow Godin to such a modification would allow Godin to give either positive or negative feedback about the price of an item.

Claim 12. Godin teaches, The network sales terminal of claim 11, wherein the feedback indication area is operative to display the feedback indication in the form of one of a series of different pictorial icons (col. 5, lines 41-51).

Claim 13. Godin teaches, The network sales terminal of claim 11, wherein the feedback indication area is operative to display the feedback indication in near real time (col. 3, lines 65-66).

Claim 14. Godin teaches, The network sales terminal of claim 11, wherein the price choice selection controls are associated with time-separated price choices from a falling-price schedule (col. 6, lines 50-56).

Claim 15. This independent claim is rejected for the similar rationale as given above for claim 1.

Claim 32. Godin failed to teach, The method of claim 1, including adjusting one or more of the plurality of price choices utilizing the feedback indication. Ng teaches, including adjusting one or more of the plurality of price choices utilizing the feedback

indication (col. 11, lines 13-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include adjusting one or more of the plurality of price choices utilizing the feedback indication and to modify in Godin because such a modification would allow Godin to have the ability to enter a new lower price for a product by searching the Internet. Thus, providing feedback in the form of entering the current information and displaying it to the user.

Claim 33. Godin teaches, The method of claim 32 wherein the presenting of the plurality of price choices includes presenting the plurality of price choices as a schedule of time-separated price choices, and wherein the adjusting of the plurality of price choices includes adjusting duration between prices or adjusting an amount of at least one of the prices in the schedule (col. 5, lines 16-40).

Claim 34. Godin teaches, The network sales terminal of claim 11, wherein at least one attribute of a price choice selection control of the plurality of price choice selection controls is operative to change during an offering of an item identified in the item identification area (col. 6, lines 6-58).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure.

Dworkin (US 4,992,940) disclosed a product, the name of the manufacturer, the manufacturer's model number for the product, the lowest price among all of the vendors, the average price for the product and the list price for the product.

Miller et al (US 5,640,569) disclosed a list of goods and bidding over a network.



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Kaneko (US 5,983,199) disclosed on-line shopping.

### **Inquiries**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday-Thursday, 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



E. Colbert  
August 8, 2005